



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Casino Control Commission
(“Commission”)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules’ substantive content):

Ohio Adm.Code 3772-50-14

Rule Number(s): 3772-50-14

Date of Submission for CSI Review: November 18, 2020

Public Comment Period End Date: December 4, 2020

Rule Type/Number of Rules:

New/___ rules

No Change/1 rule (FYR? Y)

Amended/___ rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

1. **R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☒ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

2. **Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

3772-50-14, titled “Inspection and audits.” This rule provides that the Commission has access to any location that is related to skill-based amusement machine gaming, including the manufacturing, distribution, or testing of any supplies, devices, or equipment. The rule details the Commission’s inspection and audit authority, including the examination of machine locations, supplies, devices or equipment; inspecting and auditing persons that conduct or participate in skill-based amusement machine gaming; and requesting licensed persons to produce audits or other documents relating to the gaming. The rule further states that all applicants and licensees consent to the inspections and requests for disclosure of records by the Commission. The purpose of this rule is to allow the Commission access to the premises in order to inspect and ensure operators and vendors are complying with all laws pertaining to the operation of skill-based amusement machine operations.

3. **Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 2915.01 and 3772.03

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- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

This question does not apply to this rule because the federal government does not regulate skill-based amusement machines. Rather, skill-based amusement machines are governed under R.C. Chapters 2915 and 3772.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

Regulation became necessary with the passage of H.B. 64 (131st General Assembly) wherein the General Assembly required the Commission to regulate skill-based amusement machines in a manner consistent with its ability to do the same with respect to casino gaming. This rule allows the Commission to fulfill its statutory obligation to regulate skill-based amusement machines and ensure the integrity of skill-based amusement machine gaming in Ohio.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Overall, the Commission will measure the success of the rule in terms of whether the rule helps to ensure the integrity of skill-based amusement machine gaming. The Commission will consider the rule successful if the Commission is able to validate those persons who conduct skill-based amusement machine gaming in compliance with Ohio law (i.e. R.C. Chapters 2915. and 3772.) and eliminates illegal casinos (such as slot machine parlors that masquerade as skill-based amusement machine parlors). The Commission will review the information received under the rule to fulfill its obligation to regulate skill-based amusement machine gaming in Ohio and eliminate illegal casinos. The Commission will also analyze the regulated community's comments about requests for waivers or variances from this rule.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Originally, with the passage of H.B. 64 (131st General Assembly), the Commission took several steps to engage the stakeholder community regarding the regulation of skill-based amusement machines. Prior to drafting the regulations in 2016, Commission staff engaged in numerous outreach activities with members of the regulated community including telephone conversations, e-mail communication, and in-person meetings. Commission staff held numerous meetings with stakeholders, as well as visited with stakeholders at their business locations in order to understand the business environment and how the skill-based amusement machine industry operates, as a whole.

In anticipation of the Commission's review of this rule, an email was sent on October 6, 2020 to over 800 stakeholders. (Exhibits 1 and 2). In the email, stakeholders were informed that the Commission is proposing no changes to this rule and stakeholders were asked to submit any written comments on the rule by 5:00 p.m. on October 20, 2020. (Exhibit 1.) No written comments from stakeholders were received. Finally, stakeholders had the opportunity to comment during the Commission's public meeting on November 18, 2020.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

No input was provided by stakeholders.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

This question does not apply to this rule because no scientific data was necessary to develop or measure the rule's outcome, as this rule pertains to inspections and audits of skill-based amusement machines.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

Commission staff reviewed regulations in other jurisdictions, including skill-based video lottery terminals, carnival and amusement games, and boardwalk games. Further, Commission staff considered any waivers or variances to the existing rule that had been requested and granted. After reviewing other jurisdictions' requirements and carefully considering the requirements in R.C. 2915.01(UU), the Commission concluded that this rule was the most

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effective means to achieve the Commission's mandate to regulate skill-based amusement machines.

- 13. Did the Agency specifically consider a performance-based regulation? Please explain.**
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

This rule does not contain a performance-based regulation because it outlines the Commission's authority with respect to inspections and audits.

- 14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Since the General Assembly tasked the Commission with the oversight and regulation of skill-based amusement machines in Ohio, there are no other regulations that govern inspection and audits, as it pertains to skill-based amusement machine gaming.

- 15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The Commission's Division of Skill Games, under the direction and supervision of the Executive Director, will be responsible for the consistent and predictable implementation of the rule. Any issues that arise in the inspection and audit process will be reviewed by Commission staff to coordinate a consistent response and conduct outreach to the regulated community.

Adverse Impact to Business

- 16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**
- a. Identify the scope of the impacted business community; and**

Skill-based amusement machine vendors (manufacturers and distributors), skill-based amusement machine operators, skill-based amusement machine key employees, and skill-based amusement machine locations.

- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and**

The nature of the potential adverse impact from the rule includes costs for employer time and payroll. In addition, failure to comply with the rule may result in administrative action by the Commission including the denial, suspension, or revocation of a license or a monetary civil penalty.

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c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

This rule outlines the Commission’s authority with respect to inspections and audits. The potential business impact includes the time and payroll necessary to respond to an inspection or audit, the removal of machines, supplies, devices or equipment for the purpose of an inspection, and possible sanctions for non-compliance. Although the Commission seeks to inspect locations and facilities in as unobtrusive manner as possible, the presence of Commission staff may impact a business, especially when an inspection would warrant the production of additional records or information. The Commission estimates that an in-person inspection would take approximately two hours. In the event that the Commission requests a person to produce documents related to skill-based amusement machine gaming in Ohio (outside of an in-person inspection), the Commission estimates that it would take approximately three to four hours to compile the response; however, the accessibility of business records may impact this estimate. In the event that the Commission would remove skill-based amusement machines, supplies, devices, or equipment, such machine, supply, device or equipment would be returned upon the Commission’s completion of the examination or inspection. Should an applicant or licensee fail to comply with the rule, the Commission may take administrative action against the applicant or licensee including the denial, suspension, or revocation of a license or a monetary civil penalty.

17. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Unregulated gaming poses a threat to the public welfare and raises the potential for operators and others to perpetrate fraud and abuse on Ohio consumers, particularly some of Ohio’s most vulnerable citizens. To mitigate these threats, H.B. 64 (131st General Assembly) mandated the Commission to regulate skill-based amusement machines in a manner consistent with respect to the Commission’s authority to regulate casino gaming. Access to records as well as inspection and audit authority will allow the Commission to fulfill its obligation to regulate skill-based amusement machine gaming in the same manner in which it regulates casino gaming. As the rule will allow the Commission to fulfill its statutory mandate in an efficient and effective manner, the Commission concluded that the regulatory purpose of the rule justified the potential adverse business impact.

Regulatory Flexibility

18. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes (indirectly). The rule indirectly provides exemption or alternative means of compliance through rule 3772-50-10, which permits the Commission, upon written request, to grant waivers and variances, from the rules adopted under R.C. Chapter 3772-50, including this rule, if doing so is in the best interest of the public and will maintain the integrity of skill-based amusement machine gaming in the State of Ohio.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

To the extent R.C. 119.14 would apply to a violation of the rule, the Commission will provide verbal and written notification to the small business in an attempt to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable time to correct the violation. The Commission and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

20. What resources are available to assist small businesses with compliance of the regulation?

The Commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate skill-based amusement machine gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
100 E. Broad St., 20th Floor
Columbus, OH 43215
- Commission's toll-free telephone number: (855) 800-0058
- Commission's Division of Skill Games telephone number: (614)-387-0318
- Commission's fax number: (614) 485-1007
- Commission's website: <http://www.casinocontrol.ohio.gov/>
- Commission's email: info@casinocontrol.ohio.gov

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- Commission's Division of Skill Games email: skillgames@casinocontrol.ohio.gov

Also, all members of the regulated community may, in accordance with rule 3772-2-04, request to address the Commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3772-50-10, request waivers and variances from Commission regulations.

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From: [Seifert, Berena](#)
To: ["lapalmabarandgrill@gmail.com"](mailto:lapalmabarandgrill@gmail.com)
Subject: Skill Games Rule Review
Date: Tuesday, October 6, 2020 3:15:00 PM

Stakeholders,

O.A.C. 3772-50-14 is being reviewed to comply with the Ohio Casino Control Commission's ("Commission") rule review requirement. The Commission is currently proposing no changes to the rule. The current version is available below.

3772-50-14 Inspection and audits.

(A) The commission shall have access to any skill-based amusement machine location and any facility in which skill-based amusement machine supplies, devices, or equipment are manufactured, sold, distributed, tested, or otherwise held or maintained to carry out the requirements of Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder.

(B) The commission may do all of the following:

(1) Inspect and examine all skill-based amusement machine locations licensed by the commission, any location that conducts or participates in conducting skill-based amusement machine gaming and is not licensed by the commission, and any facility in which skill-based amusement machine supplies, devices, or equipment are manufactured, sold, distributed, tested, or otherwise held or maintained;

(a) Inspections shall be conducted for the purpose of determining compliance with Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder.

(b) Inspections may be conducted during reasonable business hours or at any other time if it reasonably appears that all or part of the location or facility is in operation.

(2) Inspect and examine all skill-based amusement machine supplies, devices, and equipment in or about a skill-based amusement machine location, whether or not the location is registered with or licensed by the commission;

(3) Summarily impound, seize, and remove from a skill-based amusement machine location any skill-based amusement machine supplies, devices, and equipment for the purpose of examination and inspection;

(4) Audit all persons that conduct or participate in conducting skill-based amusement machine gaming, including those that have ceased gaming; and

(5) Perform all other things the commission considers necessary to ensure the

integrity of skill-based amusement machine gaming and for the effective licensing, regulating, investigating, and penalizing of all persons conducting or participating in the conduct of skill-based amusement machine gaming authorized by Chapters 2915. and 3772. of the Revised Code and the rules adopted thereunder.

(C) The commission may request, in writing, any person subject to licensure under this chapter to produce audits, reports, advertisements, tax returns and financial records, or any other documents related to the conduct of skill-based amusement machine gaming in this state.

(D) A person shall, upon identification of a commission employee or agent, immediately admit such commission employee or agent to the location or other premise where skill-based amusement machine gaming is conducted or skill-based amusement machines are stored, repaired, or housed. A person shall cooperate at all times with the direction of the commission employee or agent and shall not interfere or hinder an inspection, audit, or investigation or allow others to interfere or hinder an inspection, audit, or investigation.

(E) All applicants and licensees consent to inspections, searches, and seizures and to the disclosure to the commission and its agents of confidential records, including tax records, held by any federal, state, or local agency, credit bureau, or financial institution and to provide handwriting exemplars, photographs, fingerprints, and any other information requested by the commission.

To assist in the rule review process, the Commission is accepting written comments on the rule. Comments may be directed to Andromeda Morrison, Director of Skill Games, at Andromeda.Morrison@casinocontrol.ohio.gov and should be received no later than 5:00 p.m. on Tuesday, October 20.

Thank you for your assistance in the rule review process.

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